

ORIGINAL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

FLOYD L. MORROW and MARLENE
MORROW,

Plaintiffs,

v.

CITY OF SAN DIEGO, et al.,

Defendants.

Case No.: 11cv1497-BAS(KSC)

**ORDER GRANTING DEFENDANT'S
REQUEST FOR AN ORDER
COMPELLING PLAINTIFFS TO
APPEAR FOR DEPOSITIONS;**

**ORDER DENYING PLAINTIFFS'
REQUEST FOR A PROTECTIVE
ORDER PRECLUDING
DEFENDANT FROM TAKING
THEIR DEPOSITIONS**

[Doc. No. 136.]

Before the Court is a Joint Motion filed by the parties requesting that the Court resolve a discovery dispute as to whether plaintiffs should be required to appear for depositions noticed by defendant. [Doc. No. 136, at p. 1.] Defendant wants to take plaintiffs' depositions to question them about the facts supporting their one remaining claim alleging violations of their constitutional rights to equal protection. Plaintiffs argue that the Court should issue a protective order preventing defendant from taking their depositions, arguing that defendant has already completed enough discovery. [Doc.

1 No. 136, at p. 1.] For the reasons outlined below, the Court finds that defendant's
2 request for an order compelling plaintiffs to appear for their depositions must be
3 GRANTED and plaintiffs' request for a protective order precluding their depositions
4 must be DENIED.

5 Background

6 After a lengthy procedural history that is set forth in the parties' Joint Motion, the
7 only remaining claim is the second cause of action in the Fourth Amended Complaint.
8 The second cause of action is filed pursuant to Section 1983 and alleges violations of
9 plaintiffs' constitutional rights to equal protection. [Doc. No. 132, at p. 3; Doc. No. 136,
10 at p. 2, 8-9; Doc. No. 47, at pp. 27-30.] Essentially, the second cause of action alleges
11 that defendant's code enforcement practices unconstitutionally targeted and cited
12 plaintiffs for having a manufactured home on their property. [Doc. No. 136, at p. 4.]

13 Discussion

14 Federal Rule of Civil Procedure 26 provides as follows: "Parties may obtain
15 discovery regarding any nonprivileged matter that is relevant to any party's claim or
16 defense and proportional to the needs of the case, considering the importance of the
17 issues at stake in the action, the amount in controversy, the parties' relative access to
18 relevant information, the parties' resources, the importance of the discovery in resolving
19 the issues, and whether the burden or expense of the proposed discovery outweighs its
20 likely benefit. Information within this scope of discovery need not be admissible in
21 evidence to be discoverable." Fed.R.Civ.P. 26(b)(1). "On motion or on its own, the
22 court must limit the frequency or extent of discovery otherwise allowed by these rules or
23 by local rule if it determines that: (i) the discovery sought is unreasonably cumulative or
24 duplicative, or can be obtained from some other source that is more convenient, less
25 burdensome, or less expensive; (ii) the party seeking discovery has had ample
26 opportunity to obtain the information by discovery in the action; or (iii) the proposed
27 discovery is outside the scope permitted by Rule 26(b)(1)." Fed.R.Civ.P. 26(b)(2)(C).

1 Under Federal Rule of Civil Procedure 30(a)(1), “[a] party may, by oral questions,
2 *depose any person, including a party, without leave of court . . .*” Fed.R.Civ.P.
3 30(a)(1) (emphasis added). Defendant has represented that it wants to depose plaintiffs
4 regarding the facts supporting their allegations in the remaining second cause of action
5 claiming a violation of their constitutional rights to equal protection. [Doc. No. 136, at
6 p. 4-5.] Defendant served plaintiffs with deposition notices, but they objected, declined
7 to appear, and indicated they intended to request a protective order. [Doc. No. 136, at
8 p. 3.]

9 Plaintiffs argue that a protective order precluding their depositions is necessary to
10 protect their rights to privacy, because defendant has already violated their privacy, as
11 alleged in the Fourth Amended Complaint, so depositions would only be a further
12 intrusion by the government. [Doc. No. 136, at p. 7.] Plaintiffs also claim it would be
13 disproportional to the needs of the case if they are required to appear for their
14 depositions. Specifically, they claim they have already “been subjected to more than
15 three hundred (300) written discovery requests,” so “[i]t is difficult if not impossible to
16 imagine what else [defendant] could possibly need from [plaintiffs] that it does not
17 already have access to.” [Doc. No. 136, at p. 7.]

18 As set forth above, defendant is entitled under Federal Rules of Civil Procedure
19 26(b)(1) and 30(a)(1) to take plaintiffs’ depositions to question them about the facts
20 supporting their remaining cause of action alleging violations of their constitutional right
21 to equal protection. Having to sit for depositions in a case they filed is not overly
22 burdensome or a violation of their privacy. Although plaintiffs allege that defendant has
23 already pursued enough written discovery to prepare a defense, there is nothing to
24 indicate defendant has previously taken plaintiffs’ depositions. Therefore, the Court
25 finds that defendant is entitled to an order compelling plaintiffs to appear for their
26 depositions.

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Conclusion

Based on the foregoing, IT IS HEREBY ORDERED that defendant's request for an order compelling plaintiffs to appear for their depositions is GRANTED. Plaintiffs' request for a protective order precluding their depositions is DENIED. Plaintiffs shall make themselves available for their depositions **within 30 days of the date this Order is filed.** Plaintiff's counsel shall meet and confer with defense counsel to reach mutually convenient dates for plaintiffs' depositions. Defendant's request for monetary sanctions is DENIED at this time.

Plaintiffs are forewarned that sanctions may be imposed against them under Federal Rule of Civil Procedure 37 if they fail to comply with this Order to appear for their depositions. Sanctions under Rule 37 may include the dismissal of this action.

IT IS SO ORDERED.

Dated: March 24, 2017



Hon. Karen S. Crawford
United States Magistrate Judge